95-799 (1)

Supreme Court, U.S.
FILED
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CLERK

NO._____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

IN RE ELIJAH W. RATCLIFF, ETC.,

PETITIONER

ON PETITION FOR WRIT OF MANDAMUS

PETITION FOR WRIT OF MANDAMUS

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48 pp

QUESTIONS PRESENTED

I. JURISDICTION WAS PROPERLY INVOKED IN THE TRIAL COURT BELOW BY THE ORIGINAL PETITION FOR JUDICIAL REVIEW TO CONTEST AN IMPROPER ASSESSMENT UNDER THE TEXAS UNEMPLOYMENT COMPENSATION ACT (Ct Ap Appx. pp 1 - 7 and 10-11; Ct Ap Tr. pp 2 - 6).

II. JURISDICTION OF THE TRIAL COURT EXTENDED TO REDRESS WRONGFUL CONDUCT COMMITTED BY STATE AGENCIES AND EMPLOYEES THROUGH THE FILING AND EFFECTIVE SERVICE OF PETITIONER'S AMENDED ORIGINAL PETITION (Ct Ap Appx. pp 12-14, 41 - 46 and 53 - 93; Ct Ap Tr. pp 18 - 24, 124 - 143 and 166 - 186).

III. JURISDICTION OF THE COURTS BELOW TO REMEDY CIVIL RIGHTS ABUSES AS ENGAGED BY RESPONDENTS NEGATIVELY AFFECTING ONE OR MORE PARTIES IS EXPRESSLY PROVIDED BY STATE OF TEXAS AND FEDERAL CONSTITUTIONAL PROVISIONS AND LEGISLATIVE ENACTMENTS (Ct Ap Appx. pp 1 - 7 and 53 - 93; Ct Ap Tr. pp 6 and 166 - 186).

IV. THE PROPOSITIONS OF PETITIONER'S REQUEST FOR ADMISSIONS AS DULY SERVED ON EACH TRIAL COURT DEFENDANT WERE EFFECTIVELY ADMITTED BY OPERATION OF THE RULES OF COURT (Ct Ap Appx. pp 16 - 39; Ct Ap Tr. pp 25- 46 and 75).

V. DISMISSAL OF THE MULTIPLE CLAIMS ASSERTED BY PETITIONER'S AMENDED PLEADINGS IN THE TRIAL COURT IS CONTRARY TO ESTABLISHED LAW AND PRECEDENT (Ct Ap Appx. pp 53 - 93; Ct Ap Tr. pp 124 - 143 and 166 - 186).

VI. THE WRIT OF MANDAMUS DIRECTING SUMMARY JUDGMENT FOR PETITIONER IS PROPER AS THE EVIDENCE ADDUCED ESTABLISHES THAT THERE REMAINS IN THE PROCEEDING NO GENUINE ISSUE AS TO ANY MATERIAL FACT, AND PETITIONER, WHO DULY MOVED FOR SUMMARY JUDGMENT, IS ENTITLED THERETO AS A MATTER OF LAW (Ct Ap Appx. pp 11, 15, 94 -129; also, pp 130 - 154; Ct Ap Tr. pp 25 - 46 and 75; pp 124 - 143 and 166 - 186; pp 144 - 165 and 194 - 207; and pp 222 - 231 with Appendix of Notice of Setting on Motion for New Trial).

RULE 14.1(b) AND RULE 29.6
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OPINIONS BELOW

The Order giving rise to appellate jurisdiction subscribed by the District Court of Travis County, Texas on the 30th day of November, 1995, appears at Part A, p. 27 of the Appendix to the Petition for Writ of Mandamus. Accompanying such Order is the Order overruling Petitioner's Motion for New Trial (A-41) in addition to pertinent docket entries, orders and opinions reflecting the sequence and nature of the improprieties justifying the extraordinary relief sought by this Petition.

JURISDICTION

The immediate Petition invokes Title 28, United States Code, Section 1651, providing for the Supreme Court of the United States, or a Justice of such Supreme Court, to issue:

> "all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

The District Court unlawfully and improperly declined to exercise the jurisdiction authorized by Vernon's Ann. Tex. Const., Art. V, Sec. 8, and V.T.C.A. Government Code §§ 24.07 and 24.08 ; the Court of Appeals, Third District of Texas, has neglected to exercise its appellate or mandamus jurisdiction in behalf of Petitioner authorized by V.T.C.A. Government Code §§ 22.201(d), 22.220 and 22.221; and the Supreme Court of Texas has improvidently refrained from the exercise of its jurisdiction provided by V.T.C.A. Government Code §§ 22.001 and 22.002, to mandate the redress of claims

duly asserted by Petitioner, effectively limiting Petitioner's recourse to the jurisdiction attached to the Supreme Court of the United State by United States Code, Const. Art. III §§ 1 and 2; and Title 28, United States Code, Section 1651, in conjunction with the appellate jurisdiction vested in this Supreme Court by Title 28, United States Code, Sections 1257 and 1447(d).

The Order invoking appellate jurisdiction was entered on the 30th day of November, 1993 (Appx. A-27). Petitioner filed a timely Notice of Appeal, but the Court of Appeals ruled on the 9th day of March, 1994, that the Order was interlocutory, and that such Court of Appeals did not have jurisdiction of the Appeal (Appx. A-30 to A-33). The Court of Appeals, also, declined on the 31st day of March, 1994, to issue a writ of mandamus compelling the judicial and magisterial remedies sought by Petitioner Appx. A - 34). On the 20th day of April, 1994, the Supreme Court of Texas, similarly, refused Petitioner's duly submitted request for mandamus relief (Appx. A - 36).

On remand, the trial Court entered an Order under date of the 31st day of May, 1994 (Appx. A - 38 to 40), "clarifying" the previously referenced Order of the 30th day of November, 1993, ruling that the subject Order "was intended as a dismissal of this cause of action"... and "hereby dismisses this entire cause of action with prejudice..."

Petitioner properly reurged his motion for a new trial, which was denied by an Order entered on the 28th day of June, 1994 (Appx. A - 40), and his appeal bond was filed, with proper notice, and

the Appeal is presently docketed as No. 03-94-00340-CV/No. 03-94-00053-CV in the Court of Appeals, Third Court of Appeals District of Texas, Austin, Texas (Appx. A - 46 to A - 47).

Attributable to the absence of relief via the Court of Appeals, Petitioner submitted an additional Petition to the Supreme Court of Texas, with Motion for Leave to File, in proper form seeking mandamus relief, which was acknowledged as having been filed on the 7th day of August, 1995, by the Clerk of such Court, John T. Adams, docketed as No. 95-0757.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

The Constitutional provisions, statutes and rules involved in the substantive proceeding are set forth in Part B of the Appendix to Petition for Writ of Mandamus served and submitted for filing herewith in conformity with U.S. Sup. Ct. Rule 14.1(f, 28 U.S.C.

Infringments by Defendants below upon Petitioner's guaranties of due process and equal protection are rampant. United States Code, Const. Amend. XIV §§ 1 and 5.

The trial Court totally disregarded its jurisdiction vested by Vernon's Ann. Tex. Civ. St., art. 5221(b), Sections 14(b) and (h) and 14-A, as well as its Constitutional jurisdiction pursuant to Vernon's Ann. Tex. Const., Art. V, Sec. 8, and its enabling legislation codified as V.T.C.A. Government Code }} 24.007 and 24.08. Similarly, the trial Court did not take cognizance of jurisdiction made applicable by the more recent enactments comprising V.T.C.A. Civil Practice & Remedies Code §§ 103.001 - 106.003,

inclusive, which legislation encompasses a waiver of sovereign immunity applicable to the facts attending the proceeding and adduced in the trial Court.

Still further, the trial Court did not give due credence to well established Federal standards creating actionable claims for violations of the civil rights of citizens and persons within the jurisdiction of the United States provided at Title 42, United States Code, Sections 1981, 1982, 1983, 2000e, 2000e-2, 2000e-3, and 2000e-7. Petitioner's pleadings in the trial Court were in conformity with Vernon's Ann. Tex. Rules Civ. Proc., rules 45, 46, 47, 48, 49, 50, 51 and 63, notwithstanding the Order dismissing the action, and Vernon's Ann. Tex. Rules Civ. Proc., rule 169, provided the basis for the admissions complementing the affidavits justifying summary judgment for Petitioner pursuant to Vernon's Ann. Tex. Rules Civ. Proc., rule 166a.

The Court of Appeals, Third District, Austin, Texas, did not engage its patent jurisdiction to rectify the improper rulings, determinations and omissions by the trial Court contemplated by V.T.C.A. Government Code §§ 22.220(a) and (c) and 22.221(d), and the Supreme Court of Texas through the date of this Petition has inappropriately deferred its jurisdiction to mandate proper judicial proceedings by the inferior civil courts of the State of Texas under V.T.C.A. Government Code §§ 22.001(a), (b) and (d) and 22.002.

STATEMENT OF CASE

This action arises out of the erroneous dismissal of Petitioner's claims for equitable relief in the trial

Court (Ct Ap Appx. pp 156 - 157), and the failure of the Third Court of Appeals of Texas to direct compliance with applicable law (Ct Ap No. 03-94-00340-CV). V.T.C.A. Government Code §§ 22.002 and 22.221(d).

The District Court action was initiated following harassment activities flowing out of the Lufkin, Texas Regional Office of Petitioner Texas Employment Commission (Ct Ap Appx. pp 3 - 6; Ct Ap Tr. pp 2 -6). The recognition of a correlation between (1) an unfounded and fraudulent Statement of Employer Account issued by such Respondent's employees at Lufkin, Texas as mailed to and served upon Petitioner at Livingston, Polk County, Texas and (2) a pattern of misfeasance, malfeasance and nonfeasance including harassment and involving unconstitutionally wrongful deprivation of Petitioner's privilege to practice law in the Courts of the State of Texas prompted amendment of such relator's trial Court pleadings effectively impleading Respondent State of Texas, State Bar of Texas and Karen Johnson, Executive Director of the State Bar of Texas, in addition to Robert G. Johnstone and R. D. Cooper as culpable employees of Respondent Texas Employment Commission.

The original pleading sought judicial review of Respondent Texas Employment Commission's unwarranted employment tax against Petitioner's business interests at Livingston, Texas. However, the amended pleadings sought plenary review and relief encompassing the full jurisdiction of the trial Court to redress wrongful conduct ex contractu as well as ex delicto. Vernon's Ann. Tex. Const., Art. V, Sec. 8; V.T.C.A.

Government Code §§ 24.007 and 24.008.

Dismissal of the litigation by the trial Court was unconstitutional and violative of statute (Ct Ap Appx. p. 156, Ct Ap Tr. p. 214), and an Appeal was perfected to the Court of Appeals, Third Court of Appeals District of Texas, at Austin, Texas, on the 26th day of January, 1994 (Ct Ap Tr. pp 241 - 246), but the Court of Appeals has not implemented the indicated remedy (Ct Ap No. 03-94-00053-CV, No. 03-94-00141-CV and No. 03-94-00340-CV) comprising an extraordinary irregularity in the context of Vernon's Ann. Tex. Rules Ap. Proc., rule 77(2), providing, with respect to order of hearings, that precedence shall be given "cases in which the State is a party."

With the case having been within the jurisdiction of the Court of Appeals, Third District of Texas, for nearly two years without discernible progression toward the indicated relief, Petitioner elected to renew his quest for mandamus relief from the highest civil court of the State of Texas, and his Motion for Leave to File Petition for Writ of Mandamus was docketed with the Supreme Court of Texas on the 7th day of August, 1995, as No.95-0757.

Petitioner has contested his fraudulent disbarment by Respondent State Bar of Texas, alleged to have occurred on the 28th day of February, 1974, or thereabouts, in various forums and contexts, including Federal civil rights removal actions, over the years, and he resubmitted this contention through "Plaintiff's First Amended Original Petition" forwarded to the trial Court on the 24th day of February, 1993 (Ct Ap.

Appx. pp 41 - 46, inclusive). Paragraph III of such Petition gave full notice to the Defendants named therein of the Federal claims attached to Petitioner's pleadings as it states:

> "The entries of the described Statement of Employer Account, No. 01-956543-2, are incorrect and appear to be a product of fraudulent computer input in violation of Vernon's Ann. P. C. §§ 32.01, et seq., and 33.01; 18 U.S.C.A. § 1001; and 42 U.S.C.A. §§ 1981, 1982 and 1983, as the referenced business entity Dunbar Resources-Livingston, Inc., has not engaged employees or incurred employee wages for the interim as referenced by the attached Statement of Employer Account, No. 01-956543-02."

Such Federal claims were highlighted and further particularized by "Plaintiff's Third Amended Original Petition submitted to the trial Court on the 17th day of September, 1993 (Ct Ap Appx. pp 73 - 92, inclusive). However, the action was dismissed by an Order rendered under date of the 30th day of November, 1993 (Appx A-38 to A-40).

The subject Federal claims were presented to the Court of Appeals, Third District of Texas, through a timely filed "Brief of Appellant and Petition for Writ of Mandamus" citing Federal Constitutional as well as statutory provision which are violated by the Order of dismissal entered by the trial Court (Ct. Ap No. 03-94-00053/No. 03-94-00141-CV). The described claims were repeated in the Brief of Appellant most recently

submitted to the described Court of Appeals under the Appeal docketed as No. 03-94-00340-CV. However, the Court of Appeals dismissed the initial Petition and remanded the Appeal (Appx. A-30 to A-34), and it has failed to act on the most recently filed Appeal (Appx. A-46).

The subject Federal claims were presented to the Supreme Court of Texas via a Motion for Leave to File and Petition for Writ of Mandamus docketed as No. 94-0324, similarly citing Federal Constitutional as well as statutory authorities which were contravened by the trial Court, and the nonfeasance of the Court of Appeals, but the motion for leave to file petition for writ of mandamus was overruled on the 20th day of April, 1994 (Appx. A - 36).

The pertinent Federal claims were reiterated before the Supreme Court of Texas via another Motion for Leave to File and Petition for Writ of Mandamus filed therein on the 7th day of August, 1995 (Appx. A - 48), which currently has not been granted.

ARGUMENT

I. JURISDICTION WAS PROPERLY INVOKED BELOW BY THE ORIGINAL PETITION FOR JUDICIAL REVIEW TO CONTEST AN IMPROPER ASSESSMENT UNDER THE TEXAS UNEMPLOYMENT COMPENSATION ACT.

"Plaintiff's Original Petition for Judicial Review" was filed in the trial Court on the 21st day of September, 1992, expressly invoking the Court's jurisdiction under the Texas Unemployment Compensation Act (Ct Ap

Appx. pp 1 - 7; Ct Ap Tr. pp 2 - 6). Vernon's Ann. Tex. Civ. St., art. 5221(b), Sec. 14(b) and (h) and 14-A, subsequently repealed and codified under V.T.C.A. Labor Code (1993).

Respondent Texas Employment Commission entered a general appearance on the 19th day of October, 1992, represented by the Office of the Attorney General of Texas (Ct Ap Appx. pp 8 - 9; Ct Ap Tr. pp 7 - 8). Vernon's Ann. Tex. Rules Civ. Proc., rules 120 and 121.

Thus, the initial issues in the case were properly joined. Vernon's Ann. Tex. Const., Art. I, Secs. 16, 17 and 19 and Art. V, Sec. 8; Motorola, Inc. v Bullock, 586 S.W.2d 706 (3rd Dist. Austin 1979).

II. JURISDICTION OF THE TRIAL COURT EXTENDED TO REDRESS WRONGFUL CONDUCT COMMITTED BY STATE AGENCIES AND EMPLOYEES THROUGH THE FILING AND EFFECTIVE SERVICE OF PETITIONER'S AMENDED ORIGINAL PETITION.

"Plaintiff's First Amended Original Petition" was filed below on the 26th day of February, 1993 (Ct Ap Appx. pp 41 - 46; Ct Ap Tr. pp 18 - 24). The impleaded Respondents Robert G. Johnstone, R. D. Cooper and the State of Texas appeared herein represented by Counsel for Respondent Texas Employment Commission, an agency of the State of Texas, each hereinafter referred to as Respondent and plurally as TEC Respondents, through an answer filed on the 12th day of March, 1993 (Ct Ap Appx. pp 47 - 48; Ct Ap Tr. pp 47- 48); and the impleaded Respondent State Bar of Texas, an agency of the State of Texas, hereinafter referred to

along with Respondent Karen Johnson, its Executive Director, as Respondent and plurally as State Bar Respondents, appeared herein by filing an answer with the Court below on the 25th day of March, 1993 (Ct Ap Appx. pp 49 - 52; Ct Ap Tr. pp 49 - 52). Vernon's Ann. Tex. Rules Civ. Proc., rules 51 and 63.

The case was assigned to the docket of the Honorable Werner Jeane Meuer, Judge of the 98th Judicial District, Travis County, Texas, a Respondent herein, who has not taken any substantive action in the proceeding of record. (Ct Ap Appx. p. 10). United States v New York Telephone Co., 98 S.Ct. 364 (1962), 434 U.S. 159, 54 L.Ed.2d 376.

Each of the amended petitions filed below recognizes and denotes a correlation between the irregularities engaged against Petitioner by TEC Respondents, through representatives out of the Lufkin Regional Office, with a continuing pattern of tortuous conduct on the part of State Bar Respondents (Ct Ap Appx. pp 41 - 46 and 53 - 93; Ct Ap Tr. pp 18 - 24 and 124 - 143).

The doctrine of sovereign immunity is not a license for a State agency to engage unreasonable abuses. The conduct of an officer of a sovereign is proper for redress in a suit for specific relief against the officer where his action is beyond the officer's statutory authority, and the legislature may constitutionally authorize a suit against the State itself entailing the payment of public funds from the State treasury. United States Code, Const. Amend. 14, § 5; Florida Department of State v Treasure Salvors, 102 S.Ct. 3304 (1982), 458 U.S. 670, 732 L.Ed.2d 1037.

III. JURISDICTION OF THE COURT BELOW TO REMEDY CIVIL RIGHTS ABUSES AS ENGAGED BY TRIAL COURT DEFENDANTS NEGATIVELY AFFECTING ONE OR MORE PARTIES IS EXPRESSLY PROVIDED BY STATE OF TEXAS AND FEDERAL CONSTITUTIONAL PROVISIONS AND LEGISLATIVE ENACTMENTS.

Each of Petitioner's amended petitions as duly served on each named Defendant below set forth the irregularity of the actions of TEC Respondents' Lufkin Tax Office in falsely assessing a liability for unemployment taxes against Petitioner's business interests at 1000 West Street, P. O. Box 862, Livingston, Polk County, Texas 77351. Such tactics extended to securing the Office of the Sheriff of Polk County, Texas to serve repetitious subpoenas on Petitioner without any reasonable basis in addition to continuous mailings of deficiency assessment notices to Petitioner's business address of P. O. Box 862, Livingston, Texas 77351 (Ct Ap Appx. pp 1- 7, p. 15, paragraph XXXIX, p. 32, paragraph XXXXII, pp 41 - 46 and pp 53 - 93; Ct Ap Tr. pp 18 - 24, 124 - 143, 166 - 186, paragraph I - III, inclusive). Vernon's Ann. Tex. Civ. St., art. 5221(b), Sec. 14(b) and (h) and 14-A; Florida Department of State v Treasure Salvors, Supra.

In contrast with the Original Petition, the amended petitions, at paragraph IV thereof, specify the joint character and effect of the misconduct engaged by TEC Respondents with the tortuous abuses covering a number of years by State Bar Respondents and requests equitable compensation in

addition to declaratory and injunctive relief, at paragraph V, et seq. Title 42, United States Code, Sections 1981, 1982, 1983 and 2000e, 2000e-2, 2000e-3, and 2000e-7; V.T.C.A. Civil Practice & Remedies Code §§ 103.001, 103.002, 103.004, 103.005, 103.006, 103.007, 104.001, 104.002, 104.003, 104.0035, 104.004, 104.005, 104.006, 104.007, 104.008, 105.001, 105.002, 105.003 105.004, 106.001, 106.002 and 106.003; V.T.C.A. Government Code §§ 24.007 and 24.008; Wells v Hutchinson, 499 F. Supp. 174 (ED TX 1980); District of Columbia Court of Appeals v Feldman, 103 S.Ct. 1303, (1983), 460 U.S. 462, 75 L.Ed.2d 206; Consumers Union of the United States v Virginia State Bar and the Supreme Court of Virginia, 688 F.2d 218, certiorari denied 103 S.Ct. 3124 (1983), 462 U.S. 1137, 77 L.Ed.2d 1375.

While the referenced State legislative enactments obviously cannot establish exclusive jurisdiction of Petitioner's claims herein, concurrent jurisdiction with the United States District Court is clearly apparent as Congress has never preempted the realm of civil rights remedies. Coastal States Trading, Inc. v Shell Pipeline Corp., 573 F. Supp. 1415 (S.D. TX 1983); Shell Pipeline Corp. v Coastal States Trading, Inc., 788 S.W.2d 837 (1st Dist. Houston 1990), App. Writ Err. Denied; United States v Haley, 83 S.Ct. 11 (1962), 71 U.S. 19, 9 L.Ed. 2d 1.

IV. THE PROPOSITIONS OF PETITIONER'S REQUEST FOR ADMISSIONS AS DULY SERVED ON EACH TRIAL COURT DEFENDANT WERE EFFECTIVELY ADMITTED BY OPERATION OF THE RULES OF COURT.

Petitioner is entitled to an adjudication of sanctions under Vernon's Ann. Tex. Rules Civ. Proc., rule 169, in conjunction with his Rule 169 requests for admissions served on both TEC and State Bar Respondents herein on the 19th day of March, 1993 (Ct Ap Appx. pp 16 - 40; Ct Ap Tr. pp 25 - 46, 53-75), along with interrogatories pursuant to Vernon's Ann. Tex. Rules Civ. Proc., rule 168, which items instructed the parties to respond and answer the respective discovery items within thirty (30) days following service thereof.

The suggested adjudication should specify that "Plaintiff's Original Rule 169 Request for Admissions" as served on Respondent State Bar of Texas be deemed admitted for the reason that such party's response fails to deny or object to the respective propositions of the subject Request for Admissions as required by Vernon's Ann. Tex. Rules Civ. Proc., **rule 169.1**, comprising an admission of each respective proposition as such rule provides:

> "The matter is admitted... unless within thirty (30) days after service of the request... the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or his attorney... A party who considers that a matter of which an admission is requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of

> paragraph 3 of Rule 215, deny the matter or set forth reasons why he cannot admit or deny it."

Reyes v International Metals Supply Co., 666 S.W.2d 622 (1st Dist. Houston 1984).

Respondent State Bar of Texas declined to extend an authorized signature to any of its drafted responses on "Plaintiff's Original Rule 169 Request for Admissions", and it elected, further, not to utilize any language of adoption or incorporation by reference with respect to any response on the Request for Admissions. See Gilbert v General Motors Corporation, 133 F.2d 997 (2nd Cir. 1943), certiorari denied 63 S.Ct. 103 (1943), 319 U.S. 743, 87 L.Ed. 1700.

The responses of Respondent State of Texas to Request for Admissions numbered IV, V, VI, VII, VIII, IX, X, XI, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX, XXXIV and XXXIX (Ct Ap Appx. pp 17 - 30 and 39)) are clearly insufficient as discovery responses. A party is obligated to answer a request for admissions if the means of securing the information sought are reasonably within its power even if he has no personal knowledge of the facts, and the party seeking the admission is acquainted with the facts. United States Fire Insurance Co. v Maness, 773 S.W.2d 748 (1st Dist. Houston 1989), error refused, rehearing of writ overruled. This is particularly true where the party served must already know the truth or falsity of the subject proposition, or being presently without such knowledge, has a duty to inform himself. Stewart v

Vaughn, 504 S.W.2d 600 (14th Dist. Houston 1974).

The unsigned drafts of responses by Respondent State Bar of Texas to "Plaintiff's Original Request for Admissions" numbered II, IV, V, VI, VII, VIII, IX, X, XI, XIII, XIV, XV, XVI, XVII, XVIII, XXI, XXIV, XXV, XXVI, XXVII, XXX, XXXI, XXXII, XXXIII, XXXV, XXXVI, XXXVII, XXXVIII, XXXIX, XXXX, XXXXI and XXXXII (Ct Ap Appx. pp 17 - 32 and 38 - 40) are, furthermore, insufficient as responses to the Request for Admissions for the reason that such Respondent is obligated to answer each statement of a request for admissions where the means of securing the information are reasonably within its power whether or not it has personal knowledge of the facts, and unaffected by the serving party's familiarity, or lack thereof, with the subject information. This principle is uniquely applicable to the immediate facts where Respondent State Bar of Texas, as an agency of the State of Texas when the pertinent records were accumulated, and Respondent State of Texas are the custodians of the subject original records from which the information sought is to be derived (Ct Ap Appx. pp 130 - 154). Vernon's Ann. Tex. Rules Civ. Proc., rule 208.

The unsigned draft of responses by Respondent State Bar of Texas to Petitioner's Request for Admissions numbered XIX, XXIV, XXV and XXVI (Ct Ap Appx. pp 143 - 144 and pp 146 -147) are comparably insufficient to the extent that reliance is upon the grounds that the information sought is controversial or may require a determination by a court. The party's option would

obviously have been to deny the proposition if it controverts the statement because it deems the proposition false. Vernon's Ann. Tex. Rules Civ. Proc., rule 169.1; Kansas City Title Insurance Co. v Atlas Life Insurance Co., 336 S.W.2d 204 (6th Dist. Texarkana 1960).

Petitioner submits, also, that both TEC and State Bar Respondents have an, alternative, duty to supplement their answers to Petitioner's Rule 168 and 169 discovery items served on such parties. The subject conduct by each served party is grossly incomplete and disregardful for the scope of the prescribed discovery as defined by Vernon's Ann. Tex. Rules Civ. Proc., rules 168.2, 168.5 and 215.1.b.3.b; Tharp v Blackwell, 570 S.W.2d 154 (6th Dist. Texarkana 1978).

The unexecuted drafts by Respondent State Bar of Texas to "Plaintiff's Rule 168 Interrogatories" are inherently evasive as such Respondent declines to extend a signature to any answers to the Interrogatories herein, such party elected not to incorporate or adopt the draft of answers by an express or legally obligatory reference.

With respect to Interrogatories numbered IV, V, VI, VII, VIII, IX, X, XXII, XIV, XX, XXI, XXII, XXIII and XXIX (Ct Ap Appx. pp 17 - 27 and 38 - 40), an objection that the party has no personal knowledge of the content of the interrogatories is insufficient. However, to the extent that the party purports for the utterance to entail a binding answer, then such lack of knowledge would have sufficed, if properly endorsed. Makry v University of Texas Health Science Center at Dallas,

529 S.W.2d 802 (4th Dist. Dallas 1976), ref., n.r.e..

Pertinent to Interrogatory No. XXIX (Ct Ap Appx. p. 27), an objection on the ground that an answer will require research of the laws of all states is not sustainable in light of the concern of the immediate litigation involving the laws of the State of Texas and related Federal jurisdiction which the Court may properly note is in the "conflict of laws" domain. 12 Tex Jur 3d Conflict of Laws §§ 1 - 29, pp 593 - 645; Vernon's Ann. Tex. Rules Evid. Rule 201(b); Lowe v Texas Tech University, 540 S.W.2d 297 (Sup. 1976).

Pertinent to the approach of TEC Respondents, Petitioner's discovery items are obviously calculated to produce information supportive of "Plaintiff's First Amended Original Petition" below, as well as the subsequent amendments thereto, and an objection by a party based on irrelevancy, or that the items are not likely to lead to the discovery of relevant, material or admissible evidence is an insufficient basis for a refusal to answer. Braden v Downey, 811 S.W.2d 922 (Sup. 1991).

Also, any argument by TEC Respondents that the information sought is not in the possession of such parties is false as diligent inquiry among such TEC and State Bar Respondents and their agencies, even in the absence of active collusion, must reveal, and the subject inquiry is not vague and ambiguous, but, to the contrary, the inquiry is clear and concise. Lack of knowledge in each instance would suffice as an answer, but it is not a proper objection (Ct Ap Appx. pp 130 - 154). Ibid.

Discovery is not objectionable merely because of the quantity and detailed character thereof where the inquiries are not egregiously burdensome or oppressive. Ibid.

V. DISMISSAL OF THE MULTIPLE CLAIMS ASSERTED BY PETITIONER'S AMENDED PLEADINGS IN THE TRIAL COURT IS CONTRARY TO ESTABLISHED LAW AND PRECEDENT.

"Plaintiff's Third Amended Original Petition" was filed in response to the Court's Order precluding Petitioner's representation of a corporate entity as an unlicensed attorney, in addition to other voluntary additions and substitutions by Petitioner (Ct Ap Appx. pp 73 - 93; Ct Ap Tr. p. 187 and pp 166 - 186). Vernon's Ann. Tex. Rules Civ. Proc., rule 63. State Bar Respondents' exception to Petitioner's standing to sue such Respondent was not sustainable by the Presiding Judge (Ct Ap Appx. p. 155; Ct Ap Tr. pp 188 - 189). Florida Department of State v Treasure Salvors, Inc., Supra., on remand 689 F.2d 1254 (5th Cir. 1982); District of Columbia Court of Appeals v Feldman, Supra.; Consumers Union of the United States v Virginia State Bar and the Supreme Court of Virginia, Supra.

Also, any State Bar Respondents' exception to the lack of specificity with respect to compensation requested by the Petition below was not sustainable by the Presiding Judge as Petitioner displayed that the Petition sought equitable compensation which is inherently incapable of unequivocal liquidation prior to a prerequisite accounting or

computation. Southwest Weather Research, Inc. v Duncan, 319 S.W.2d 417 (8th Dist. El Paso 1959), affirmed 327 S.W.2d 940 (TX 1959); Wells v Hutchinson, Supra.

It is incontestable that Petitioner complied timely with the Court's Order of the 18th day of August, 1993, by submitting "Plaintiffs' Second Amended Original Petition" prior to the deadline set by the Court of August 27, 1993, which Amended Petition was duly filed by the Office of the Clerk of the District Court of Travis County, Texas prior to the 27th day of August, 1993 (Ct Ap Appx. pp 53 - 72; Ct Ap Tr. pp 124 -143).

Petitioner emphasizes at this juncture that neither "Plaintiffs' Second Amended Original Petition" nor any pleading filed by Petitioner herein alleges that the State Bar made libelous representations regarding Petitioner on or about July 31, 1989, but the allegation as properly pleaded is that the subject "libelous misrepresentations" reached a certain magnitude on or about July 31, 1989, and "Plaintiff's Third Amended Original Petition" merely further correlated the subject allegations at paragraph VI of the Petition with the preceding paragraphs which itemized the pertinent libel and accompanying misconduct attributable to State Bar Respondents (Ct Ap Appx. pp 76 - 90).

The above described "Plaintiff's Third Amended Original Petition" was submitted in conformity with the Order of Judge John K. Dietz rendered on the 16th day of September, 1993 (Ct Ap Appx. p. 155; Ct Ap Tr. p. 187), directing, in spite of the Motion for Leave to Appear filed preliminary to the Original Petition (Ct Ap Tr. p. 2), that

Petitioner Elijah W. Ratcliff refrain from appearing to represent a corporate entity as an unlicensed attorney. Such pleading, setting forth, unequivocally, singular representation of Petitioner and his joint venture interests, Pro Se, was duly filed by the Office of the Clerk of the District Court of Travis County, Texas prior to the 30 day deadline set herein by Judge Dietz in his Order rendered on the 16th day of September, 1993 (Ct Ap Appx. pp 73 - 93; Ct Ap Tr. pp 166 - 186). Vernon's Ann. Tex. Rules Civ. Proc., rule 63.

Petitioner's trial Court pleadings comply with the requirements of the Texas rules of court, and particularly Vernon's Ann. Tex. Rules Civ. Proc., rules 45 -51, inclusive, incontestably, as currently amended. District of Columbia Court of Appeals v Feldman, Supra.; Consumers Union of the United States v Virginia State Bar and the Supreme Court of Virginia, Supra.

As Petitioner's pleadings set forth one or more claims upon which equitable recovery is proper against all trial Court Defendants, costs in the proceeding should appropriately be assessed against such Respondents. Vernon's Ann. Tex. Rules Civ. Proc., rule 131.

VI. THE WRIT OF MANDAMUS DIRECTING SUMMARY JUDGMENT FOR PETITIONER IS PROPER AS THE EVIDENCE ADDUCED ESTABLISHES THAT THERE REMAINS IN THE PROCEEDING NO GENUINE ISSUE AS TO ANY MATERIAL FACT, AND PETITIONER, WHO DULY MOVED FOR SUMMARY JUDGMENT, IS ENTITLED THERETO AS A MATTER OF LAW.

Petitioner, Pro Se, moved the trial Court for a summary judgment upon the claim pleaded via amended petition filed below (Ct Ap Appx. pp 41 - 46 and 53 -93; Ct Ap Tr. pp 18 -24, 124-143 and 166 - 186), and in support of such Motion related to the Court that such pleadings were duly filed and served herein setting forth a cause of action conforming to Vernon's Ann. Tex. Civ. St., art. 5221(b), Sec. 14(b) and (h) and 14-A, and Title 42, United States Code, Sections 1991, 1982 and 1983. Vernon's Ann. Tex. Const., Art. V, Sec. 8; V.T.C.A. Government Code §§ 24.007 and 24.008. The pleadings as filed below in conjunction with (1) certain admissions of TEC and State Bar Respondents by operation of Vernon's Ann. Tex. Rules Civ. Proc., rule 169, with respect to a Request for Admissions duly served on such Respondents by Petitioner, Pro Se, as filed below more than thirty (30) days prior to service of the subject Motion (Ct Ap Appx. pp 16 - 40); (2) the affidavits attached thereto and incorporated therein (Ct Ap Appx. pp 98 - 129; and (3) the record in its entirety in the trial Court establish that there is in the cause no genuine issue as to any material fact, and Petitioner, the Movant, is entitled to a summary Judgment as a matter of law as authorized by Vernon's Ann Tex. Rules Civ. Proc., rule 166a.a.

This Court should find that the trial Court's jurisdiction attached with respect to the relief sought by Petitioner inclusive of, but not limited to, statutory authorizations adopted by the sovereign State of Texas, to wit:

(1) a remedy and recoverable

damages for Petitioner as a person wrongfully imprisoned pertinent to V.T.C.A. Civil Practice & Remedies Code § 103.001, et seq. (Ct Ap Appx. pp 17 - 20, paragraphs IV - XI and XII - XV, pp 73 - 93, pp 100- 103, Affidavit paragraphs III - X and pp 118 - 120, Affidavit paragraphs III - VII; Ct Ap Tr. pp 53 - 75, paragraphs IV - XI and XII - XV, pp 144 - 165, Affidavit paragraphs III - X, inclusive; and pp 194 - 207, Affidavit paragraphs III - VII, inclusive);

(2) Vicarious State liability arising out of negligence in lieu of State employees and liability arising out of deprivation of rights and privileges secured by laws of the State encompassing the wrongful conduct of TEC and State Bar Respondents herein under V.T.C.A. Civil Practice & Remedies Code § 104.001, et seq. (Ct Ap Appx. Ibid.; Ct Ap Tr. Ibid.);

(3) an action to recover fees, expenses and attorney's fees arising out of the frivolous claims of State agencies pursuant to V.T.C.A. Civil Practice & Remedies Code § 105.001, et seq. (Ct Ap Appx. pp 30 - 33, paragraphs XXXIX - XXXXII, p. 96 [p. 5, paragraph (3)] and pp 110 - 112, Affidavit paragraphs XXIV - XXVI; Ct Ap Tr. pp 53 - 75, paragraphs XXXIX -XXXXII, inclusive; and pp 144 -165 [p. 5, paragraph (3)], and Affidavit paragraphs XXIV - XXVI, inclusive), and

(4) the recovery of compensation arising out of discrimination by TEC and State Bar Respondents against Petitioner because of race as proscribed by V.T.C.A. Civil Practice & Remedies Code § 106.001, et seq., (Ct Ap Appx. pp 16 - 40, paragraphs IV -XXXXVII, pp 99 - 115, Affidavit paragraphs II - XXV; Ct Ap Tr.

pp 53 - 75, paragraphs IV -XXXXVII, inclusive, pp 144 - 165, Affidavit paragraphs II - XXXII, inclusive, pp 194 - 207, Affidavit paragraphs II -XXV, inclusive). Vernon's Ann Tex. Rules Civ. Proc., rule 48; Moore v Rice, 80 S.W.2d 451 (11th Dist. Eastland 1935); International Pipeline Systems, Ltd. v M. M. White & Associates, Inc., 831 S.W.2d 444 (14th Dist. Houston 1992).

Elongated details of the cause of action are not inherently essential so long as fair notice of the conduct complained of is communicated. Vernon's Ann Tex. Rules Civ. Proc., rules 45.b and 47.a. Thus, paragraph IV of the amended Petition was not required to specify each act of the parties which contributed to a given claim under such Petition.

Petitioner's discovery efforts giving rise to undocumented utterances that the information elicited was not easily available to the parties, if deemed properly endorsed, adduced that such parties were given fair notice by Petitioner's pleadings, as served, of the conduct which they must defend, but such parties elected to engage an insufficient and less than reasonable research effort comprising an evasive response, calculated to circumvent the operation of Rules 169 and 215 of the Texas Rules of Civil Procedure (Ct Ap Appx. pp 16 - 40, also, pp 51 - 51, paragraphs II- V; Ct Ap Tr. pp 53 - 75). Vernon's Ann. Tex. Rules Civ. Proc., rules 169 and 215.4; United States Fire Insurance Company v Maness, Supra.

Neither TEC Respondents nor State Bar Respondents have offered an argument that they would have responded more

intelligently or informatively to additionally prolonged pleadings than they have to extensive discovery.

Any objection that Petitioner has failed to enumerate specific injunctive and declaratory relief to which he is entitled is not a proper objection, and it is in fact proscribed by Rule 45(b) providing:

> "...That an allegation be evidentiary or be of a legal conclusion shall not be grounds for objection when fair notice is given by the allegations as a whole..."

To the extent that damages are unliquidated, Vernon's Ann. Tex. Rules Civ. Proc., rule 47.b, is satisfied by the contents at paragraph IV of the amended Petition relating:

> "The activities and misconduct of Defendants as described above have taken the form of infringements... justifying equitable compensation from the governmental Defendants in an amount observed to exceed the minimal jurisdictional limitations of this Court..."

A party does not create a genuine issue as to a material fact merely by stating such a premise, particularly in the absence of a notorial act supporting the assertion (Ct Ap Appx. pp 41 - 52). Jeffrey v Larry Plotnick Co., Inc., 532 S.W.2d 99 (5th Dist. Dallas 1975).

The information presented by Petitioner's Affidavit (Ct Ap Appx. pp 99

- 115; Ct Ap Tr. pp 151 - 165) as well as the Affidavit of Louise D. Fleeks (Ct Ap Appx. pp 116 - 129; Ct Ap Tr. pp 194 - 207) derived from elemental facts accessible from the subject Respondents' records and files reviewed by Petitioner and other interested parties over the years, and to the extent that such Respondents cannot refute such facts presently, it is incumbent upon them to indicate the reason for such inability and to suggest how, if ever, they will controvert the subject factual propositions and statements.

Merely stating that the Affidavit of Petitioner or that of the witness Louise D. Fleeks is defective, or that such evidence is not clear, positive, direct, credible, or free from contradiction does not create such infirmities in the subject items, but the notorious truth of the contents of each affidavit is the actual inhibition to a traversing affidavit.

The tenor of Respondent State Bar's strategy is that its Counsel seek the path of least resistance whereas Rules 168 and 169 coupled with Rule 215 require a greater effort to acquire and relate information uniquely and unexceptionably available to a party served with Rule 168 interrogatories and Rule 169 requests for admissions, if such party elects to avoid sanctions and the operation of law to the manuever. Vernon's Ann. Tex. Rules Civ. Proc., Rules 168, 169 and 215; State v Lowry, 802 S.W.2d 669 (Sup. 1991).

Focusing at this point on jurisdiction uniquely triggered by TEC Respondents, the notice of assessment in the form of Statement of Employer Account No. 01-956543-2 was made "prima facie

evidence of the contents thereof" by Vernon's Ann. Civ. St., art. 5221b, Sec. 14(b). However, such presumption is overcome when its contents are contested under oath setting forth the facts (1) that the Statement is incorrect; (2) that the interested Taxpayers have duly made written and oral requests for an explanation of the Statement's basis; and (3) that the subject agency has declined, and continues to decline, to furnish the Taxpayer, Petitioner, a basis for the Statement's determination. Walker v Johnston, 236 S.W.2d 534 (4th Dist. San Antonio 1951). Thus, to avoid summary judgment, such Respondents were required to provide proper summary judgment evidence disputing the proof relied upon by Petitioner, Pro Se, and such counter proof has not been adduced, presented, evoked or reified in the proceeding. State v Lowry, Supra. 1991).

CONCLUSION:

The Supreme Court of United States should issue the Writ of Mandamus ordering that the dismissal of the proceedings below by a Presiding Judge in the District Court of Travis County, Texas be reversed for the reasons set forth in the foregoing Petition for Writ of Mandamus. This Court's ruling should instruct an order directed to the Honorable Werner Jeane Meurer, Judge of the 98th Judicial District Court of Travis County, Texas, and to the District Court of Travis County, Texas, generically, to render Judgment for Petitioner consistent with the relief urged by the Petition for Writ of Mandamus, and the ruling of this Court.

If any meaningful factual contest arises pertinent to Petitioner's presentation of the facts and record, it appears proper to direct the Clerk of the District Court, the Honorable Amalia Rodriguez-Mendoza, Respondent, to furnish the record of relevant trial Court proceedings indispensable for the solicited appellate review as duly and timely requested preliminary to proceedings in the Court of Appeals (Ct Ap Appx. pp 166 - 172, inclusive). V.T.C.A. Government Code § § 22.001(a) and (d) and 22.002(a); Title 28, United States Code, Sections 1257, 1447(d) and 1651; Wolters v Wright, 623 S.W.2d 301 (Sup. 1981); United States v Haley, 83 S.Ct. 11 (1962), 371 U.S. 19, 9 L.Ed.2d 1.

Respectfully submitted this 30th day of September, 1995.

Elijah W. Ratcliff

PETITIONER, PRO SE

Elijah W. Ratcliff,
Consultant
P. O. Box 862
Livingston, Texas 77351
Ph. 409 327-7108

AFFIDAVIT OF SERVICE

The undersigned Affiant certifies under penalties of perjury as if executed before a proper notary public that a copy of the foregoing Petition for Writ of Mandamus with Motion for Leave to File was served by first class United States Mail on the parties herein addressed to:

Hon. Susan F. Eley, Assistant
Attorney General of Texas
P. O. Box 12548
Austin, Texas 778711-2548;

Hon. Mary F. Klapperich,
Assistant General Counsel
The State Bar of Texas
State Bar Headquarters Building
Austin, Texas 78711;

Hon. Werner Jeane Meurer,
District Judge
98th Judicial District
Travis County, Texas
P. O. Box 1748
Austin, Texas 78767;

Hon. Amalia Rodriguez-Mendoza,
District Clerk
Travis County, Texas
P. O. Box 1748
Austin, Texas 78767;

Court of Appeals
Third District
P. O. Box 12487
Austin, Texas 78711;
and
The Supreme Court of Texas
P. O. Box 12248
Austin, Texas 78711

this 30th day of September, A. D., 1995.

Elijah W. Catchings
AFFIANT